

VIA ELECTRONIC FILING

February 11, 2005

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12 Street SW, Room TWB-204
Washington, DC 20554

Re: Notice of Ex Parte – Schools and Libraries Universal Service Support
Mechanism, CC Docket No. 02-6

Dear Ms. Dortch:

On February 10, 2005 Dennis Futti, Frederick Schmitt of Norfolk Public Schools and Greg Weisiger of the Virginia Department of Education participated in a conference call with Vickie Robinson, Karen Franklin, and Jennifer Schneider of the Wireline Competition Bureau.

The purpose of the conversation was to review the pertinent details of an appeal submitted by Norfolk City Public Schools, Norfolk Virginia for various funding requests as detailed in the document with attachments submitted on October 31, 2003, under CC Docket Number 02-6. References to attachments below refer to attachments to the 10/31/03 appeal.

Background

- Norfolk Public Schools has participated in the E-rate Program since 1998.
- The district's total E-rate awards, for the seven years of the program, are less than 12 million dollars. NPS makes only reasonable submissions, and there is no indication of fraud, waste, abuse or rule violation.
- NPS has made benefited from the funding, enabling the district to provide students access to variety of electronic resources.
- SLD determined in 2002, that they had improperly awarded funding to NPS during FY2000-01 (\$566,480.60) - two years earlier. The reason cited by SLD was lack of budget (Item 25).
- All 471 forms for FY 2000-01 cycle were filed within window.
- NPS filed 471 forms under two BENs (126527 & 197129)
- There were documented technical problems with on-line applications. SLD recommended filing duplicate printed requests.
- There were several reviewers for BEN 197129.
- Requests filed under BEN 126527 were processed smoothly, while requests filed under BEN 197129 were problematic.

Series of Events

2000

Mar

- Three 471's were denied, due to unauthorized signature

Apr

- Appealed one request (200284 – attachment #1 - filed under BEN 197129) – the other two were duplicate requests.
- Received first award notification from BEN 126527.

June – August

- SLD requested item 25 review for requests filed under 197129.
- NPS sent letter to SLD that documented that all telecommunication expenses were budgeted at 100%. NPS had the necessary budgeted resources to fund the district's portion of the requests. (Attachment 2)
- NPS provided item 25 review documentation to SLD (attachment 3).
- NPS sent SLD a letter, signed by Dept. Superintendent in August 2000 that stated that the district had necessary budget resources and CLEARLY stated that one specific request was a duplicate of a funded one and would be cancelled. SLD chose not to link applications at the time.

Sept

- Received final award for requests filed under BEN 126527 (164284).

Nov

- NPS received denial of all applications under 197129, including telecommunications, due to lack of budget to support requests.

Dec

- NPS appealed denial to SLD – attachment 6
 - NPS thoroughly documented that sufficient resources existed and that the district had the necessary budget for requests. Again, NPS documented the duplicated request to the SLD.

2001

May

- NPS received notification of approval of our appeal from Apr 2000 concerning application that failed the “smear” test. SLD moved the request to data entry. (Attachment 1)

2002

Oct

- NPS received COMAD of request 164284 and 165013 (vendor - ESI, BEN:126527). SLD cited the reason was that after additional review, this request failed an Item 25 review (attachment 8).
 - COMAD was two years after the award, and well over one year after the vendor was paid for all work performed and equipment was in use. NPS clearly had the budget to support the request.

Dec

- NPS appealed COMAD decision for request 164284 and 165013 to SLD
 - In appeal, NPS outlined that not only did the district have all the financial resources, but also had all the required items necessary to make effective use of the award. (Attachment 9).

2003

Aug

- Phone conversation with Mr. McDonald of SLD about our appeal. NPS reiterated to the SLD that their rationale of linking applications after award was incorrect and should not be applied in this case. We discussed that we obviously had the budget to support the requests, given the fact that all bills were paid and equipment operational. We believed that we presented a strong case for our appeal and that SLD should rescind our COMADs. Mr. McDonald was not convinced of our argument, and in fact, mentioned that the SLD had found another award that should also be COMADed.

Sep

- NPS received denial of all our appeals to include the request that failed the “smear test” over three years ago. SLD did in fact COMAD the remaining approved awards from 2000, as stated by Mr. McDonald, citing a failed item 25 review. As shown in our appeal, the SLD cited that they would not consider any information that we provided in any of our appeals.

Nov

- NPS submitted current appeal to FCC.

Key Points in NPS’s Appeal

1. The SLD chose to ignore all information presented in our appeals, indicated by the statement “ The documentation provided on appeal will not be considered because during the course of initial review for Billed Entity of 197129, you were given the opportunity to provide such documentation and failed to do so”.
 - If SLD had acted properly, and in a timely manner, on our appeal submitted in 12/00, the COMAD issue would have not occurred.
 - NPS provided several pieces of documentation that did not appear to be considered during application review.
 - All bills to vendors were paid.

- NPS informed the SLD on several occasions that telecomm expenses were funded at 100%.
 - SLD ignored information submitted in letters and appeals.
 - SLD ignored item 25 worksheet.
- 2. The SLD was seriously deficient in processing our appeals. One appeal that failed smear test in 3/00 was not acted upon for over three years. SLD did not process the appeal submitted in Dec 2000 for over two years.
- 3. SLD should not have rejected our telecommunications requests. NPS submitted documentation that all such expenses were budgeted at 100%.
- 4. SLD was notified in the Aug 2000 letter that a duplicate request had been awarded. SLD did not cancel the duplicate request, as requested. SLD chose not to link the applications together during review at that time and subsequently request a complete item 25 review.
- 5. NPS believes that the SLD acted improperly in linking applications together, after awards.
 - SLD rationale for linking was based upon a faulty application of FCC guidelines. The United Talmudical Academy decision does not apply.
 - NPS provided a specific item-by-item ‘road-map’ of our pending requests that had non-discounted portion funding (one was left off) which alleviated the SLD from decision-making of which applications to approve. SLD should have at a minimum, approved all requests but the one for ESI (which was a duplicate) that was left off the Aug 2000 letter.
 - SLD chose not to link application during review, after NPS notified them of a duplicate and plans to cancel. Talmudical speaks only to applications during review – not applications long after the award.
 - FCC 99-292 ruling implied that post-award review must be handled differently than those during review and that the review has specific limits.
 - NPS did not request discounts for ineligible services.
 - NPS did not seek discounts for telecommunications from non-telecommunications providers

Summary

NPS has made use of the E-rate program to provide electronic resources to our students that would not have been possible otherwise. NPS has not abused the program. The district has only submitted reasonable requests for a district of our size. NPS believes that the SLD acted improperly by COMADing our applications.

First, if the SLD had acted in a timely manner on our appeals, and considered the information provided in our appeals, we most likely would not be involved in a lengthy and expensive appeals process.

Second, NPS believes that the reason for denial cited by the SLD was addressed in the materials sent to them. NPS provided documentation in our appeals that sufficient resources existed to utilize the awards. This information was ignored by the SLD and not considered upon appeal. NPS also provided notice to the SLD of duplicate requests that the SLD did not act upon, while the applications were under review.

Third, in linking applications after award, the SLD should audit applicants before a COMAD decision is made, not based upon pre-award information. Without this due process, applicants are placed in a position of having to address COMAD appeals, in lieu of providing the SLD with information BEFORE a decision is reached.

NPS requested the FCC to correct this misunderstanding by the SLD and reverse the COMAD decisions.

It should be clear that NPS has not engaged in waste, fraud or abuse of the system. We respectfully ask that these incidents be considered a regrettable example of miscommunications. Fortunately, this can be corrected by a favorable ruling for Norfolk Public Schools.

Respectfully submitted,

Greg Weisiger
(804) 692-0335

CC:
Vickie Robinson
Karen Franklin
Jennifer Schneider